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5-7-03
#18

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT
BASED ON FAILURE TO RECEIVE OFFICE ACTION
UNDER 37 C.F.R. §1.181 (a)**

First named inventor	:	Johnson, et al.
App. No.	:	09/702,002
Filed	:	October 30, 2000
Title	:	METHOD AND DEVICE FOR TREATING GASTROESOPHAGEAL REFLUX DISEASE
Examiner	:	Nikita R. Veniaminov

Group Art Unit: 3736

I hereby certify that this correspondence and all marked attachments are being deposited with the United States Postal Service as first-class mail in an envelope addressed to: United States Patent and Trademark Office, P.O. Box 2327, Arlington, VA 22202, on

March 17, 2003

(Date)

James W. Hill, M.D., Reg. No. 46,396

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TECHNOLOGY CENTER R3700

United States Patent and Trademark Office
P.O. Box 2327
Arlington, VA 22202

ATTN: Commissioner for Patents

This petition is filed in accordance with 37 C.F.R. §1.181 and in accordance with the Manual of Patent Examining Procedure (MPEP), Chapter 711.03(c).

The above-identified application became abandoned for failure to file a timely a proper response to the Office Action mailed on July 31, 2002, with the period set for response to expire after January 31, 2003. The abandonment date of this application is February 1, 2003.

Evidence in support of this Petition is provided in the accompanying documents: (a) a Declaration of James W. Hill, M.D., executed March 14, 2003; (b) a copy of the Power of Attorney filed April 12, 2001; and (c) a copy of the Notice Regarding Power of Attorney mailed August 3, 2001. These items are filed herewith.

In accordance with *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971), the U.S. Patent and Trademark Office ("PTO") should mail a new Office Action in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Office Action.

Applicant respectfully requests that: (a) this Petition To Withdraw Holding Of Abandonment Based On Failure To Receive an Office Action Under 37 C.F.R. §1.181(a) be granted; (b) the PTO send the Office Action to the attorneys of record: Knobbe, Martens, Olson & Bear, LLP; and (c) the period for reply to the Office Action be restarted.

While we believe that no fee is due for this petition, in the event that a fee is due, please charge to our Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 3/14/03

By: James W. Hill, M.D.

James W. Hill, M.D.

Registration No. 46,396

Attorney of Record

Customer No. 20,995

(949) 760-0404

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Johnson, et al

Appl. No. : 09/702002

Filed : 30-Oct-2000

For : METHOD AND DEVICE FOR
TREATING
GASTROESOPHAGEAL REFLUX
DISEASE

Examiner : Nikita R. Veniaminov

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United States Patent and Trademark Office
P.O. Box 2327
Arlington, VA 22202

Declaration of James W. Hill, M.D.

Dear Sir:

I, James W. Hill, M.D., am an attorney with the law firm of Knobbe, Martens, Olson & Bear, LLP (the "Firm"), 2040 Main Street, Fourteenth Floor, Irvine, CA 92614, which is patent counsel for Medtronic, Inc. (formerly Endonetics, Inc.). I have worked for the Firm for four years as an associate attorney. I hereby declare under oath the following statements:

The subject patent application was assigned by the inventors to Endonetics, Inc. on March 28, 2001. This assignment was duly recorded in the United States Patent and Trademark Office ("PTO") on April 11, 2001. It is my understanding that in or around February, 2002, Endonetics, Inc. was acquired by Medtronic, Inc. ("Medtronic"), which thereby became the owner of the subject patent application.

On February 6, 2003, Examiner Nikita R. Veniaminov mailed a Notice of Abandonment in this application to the Firm, indicating that an Office Action had been mailed on July 31,

2002. Because the PTO received no response to the Office Action by the deadline of January 31, 2003, the subject application became abandoned on February 1, 2003. Neither I nor the Firm were ever aware of the existence of this Office Action until we were informed that the subject application had become abandoned.

On February 22, 2003, Examiner Veniaminov faxed to me a copy of the Office Action, which indicates that it had been mailed to Medtronic, Inc., 710 Medtronic Parkway, NE, Minneapolis, MN 55432. It was and is my understanding that Medtronic was not the proper correspondence address for this application. Furthermore, Medtronic's attorneys were not and are not the attorneys of record.

A Power of Attorney in this application, designating the Firm as the attorneys of record, had been filed on April 12, 2001. The PTO accepted this Power of Attorney in a Notice Regarding Power of Attorney mailed on August 3, 2001. In that Notice, the PTO wrote, "Correspondence in this application will be mailed to the above address as provided by 37 C.F.R. 1.33." That address (at that time) was Knobbe, Martens, Olson & Bear, LLP, 620 Newport Center Drive, Sixteenth Floor, Newport Beach, CA 92660.

After discussions with Examiner Veniaminov, Supervisory Examiner Eric Winakur, and Medtronic senior patent attorneys Thomas Woods and Steven Bauer, it is my conclusion that at no time has the Power of Attorney in this application changed since it was filed on April 12, 2001. That is, Knobbe, Martens, Olson & Bear, LLP was, and remains today, the attorney of record.

From my discussions with Medtronic's patent counsel and my discussions with Supervisory Examiner Winakur, it appears that a clerical error on the part of the PTO has occurred in this case. To my knowledge, and according to the statements made to me by Thomas Woods and Supervisory Examiner Winakur, neither Medtronic nor the Firm has initiated any action that should have resulted in a change in the Power of Attorney. The Firm's correspondence address has changed, but there is no apparent reason why the PTO should have

mailed the office action to Medtronic instead of to the proper attorneys of record (Knobbe, Martens, Olson & Bear, LLP).

I hereby declare that all statements made herein of my own knowledge are true, and all statements made on information and belief herein are believed to be true and are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statement may jeopardize the validity of this application or any granting of the application resulting therefrom.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 3/14/03

By: *James W. Hill*
James W. Hill, M.D.
2040 Main Street, 14th Floor
Irvine, CA 92614



COPY

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : George M. Johnson et al.)
App. No. : 09/702,002)
Filed : October 30, 2000)
For : METHOD AND DEVICE FOR TREATING)
GASTROESOPHAGEAL REFLUX DISEASE)
Examiner : Unknown)
)

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TECHNOLOGY CENTER R3700

ESTABLISHMENT OF RIGHT OF ASSIGNEE TO TAKE ACTION AND REVOCATION AND POWER OF ATTORNEY

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

The undersigned is empowered to act on behalf of the assignee below (the "Assignee"). A true copy of the original Assignment of the above-captioned application from the inventor(s) to the Assignee is attached hereto. This Assignment represents the entire chain of title of this invention from the Inventor(s) to the Assignee.

I declare that all statements made herein are true, and that all statements made upon information and belief are believed to be true, and further, that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that willful, false statements may jeopardize the validity of the application, or any patent issuing thereon.

The undersigned hereby revokes any previous powers of attorney in the subject application, and hereby appoints the registrants of Knobbe, Martens, Olson & Bear, LLP, 620 Newport Center Drive, Sixteenth Floor, Newport Beach, California 92660, Telephone (949) 760-0404, Customer No. 20,995, as its attorneys with full power of substitution and

App. No. : 09/12,002
Filed : October 30, 2000

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revocation to prosecute this application and to transact all business in the U.S. Patent and Trademark Office connected herewith. This appointment is to be to the exclusion of the inventor(s) and his attorney(s) in accordance with the provisions of 37 C.F.R. § 3.71.

Please use Customer No. 20,995 for all communications.

ENDONETICS, INC.

Dated: 3/28/01

By: John Kilsoyne

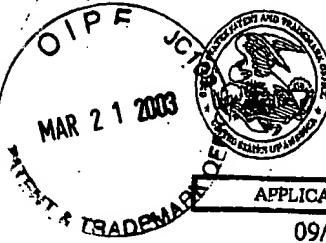
Title: President and Chief Executive Officer

Address: 11100 Roselle Street
San Diego, CA 92121

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UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

APPLICATION NUMBER 09/702,002	FILING DATE 10/30/2000	FIRST NAMED APPLICANT Gerard von Hoffmann	ATTY. DOCKET NO./TITLE ENDONET.023CP3
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20995
KNOBBE MARTENS OLSON & BEAR LLP
620 NEWPORT CENTER DRIVE
SIXTEENTH FLOOR
NEWPORT BEACH, CA 92660

CONFIRMATION NO. 7813



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Date Mailed: 08/03/2001

NOTICE REGARDING POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/12/2001.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

NO DATES DOCKETED
ATTORNEY RESPONSIBLE
[Signature]

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